SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1514

SPONSOR: Senator Clary

SUBJECT: Hospices; Rule making

DATE: March 8, 1999 REVISED: 03/11/99

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Liem	Wilson	HC	Fav/1 amendment
2.				
3.				
4.				
5.				

I. Summary:

Senate Bill 1514 expands rule making authority of the Department of Elderly Affairs relating to hospice care; clarifies that a hospice may contract for physician services, but must directly provide certain other specified services; and clarifies that a hospice patient living in a residential environment subject to state regulation is considered a hospice patient and the hospice program is responsible for the delivery of hospice care and services to the hospice patient.

The bill amends ss. 400.605 and 400.609, Florida Statutes.

II. Present Situation:

Hospice care addresses the medical, social, psychological and spiritual needs of terminally-ill patients and their families. Hospice patients typically are in their last six months of life; many are elderly people diagnosed with cancer; however, hospice services are available for any person with a terminal, or life-limiting, illness, including end-stage heart, lung and neurological disorders. Patients must be certified as terminally ill by two physicians.

Hospices are regulated under part VI of chapter 400, F.S. It is unlawful to operate or maintain a hospice without first obtaining a license from the Agency for Health Care Administration. There are currently 40 licensed hospices in Florida.

Hospice care is available to all Floridians regardless of the patient's ability to pay. Most hospices are Medicare/Medicaid certified and accept reimbursement with no deductible or co-pay. Most private insurance companies also have a hospice benefit. Some programs offer sliding scale fees, while others do not bill patients for services, relying on charitable contributions to fund un-reimbursed care.

The Department of Elderly Affairs (DOEA), in consultation with the Agency for Health Care Administration, is charged in s. 400.605(1), F.S., with establishing, by rule, minimum standards

and licensure procedures for hospices. The statute does not give rule making authority for establishing requirements for licensure of a hospice, standards for patient plans of care, procedures relating to advance directives and do-not-resuscitate orders, physical plant standards for hospice residential units and facilities, hospice disaster preparedness plans, standards and procedures relating to the establishment and activities of quality assurance and utilization review committees, or components and procedures relating to the collection of patient demographic data and other information on the provision of hospice care in the state.

Federal regulations governing Medicare-reimbursed hospice care require certain core services to be provided directly by hospice (42 CFR 418.80). These include nursing services, medical social services, physician services, and counseling services. Prior to the 1997 Federal Balanced Budget Act, such services were required to be provided by hospice employees. Now a hospice is permitted to contract for physician services and for the position of medical director. In addition to the core services, a hospice must also ensure the provision of certain other services either directly by hospice employees or under arrangements made by the hospice including: physical therapy, occupational therapy, and speech-language pathology; home health aide and homemaker services; medical supplies; and short-term inpatient care.

Although originally conceived to permit terminally ill patients to die in their own homes, hospice care is now routinely provided in other residential settings such as nursing homes, assisted living facilities and adult family care homes. Because these settings are also subject to state regulation, including responsibility for patient care, some confusion has arisen over assigning responsibility for the care of hospice patients.

A July 28, 1997, Health Care Financing Administration Program Issuance Transmittal Notice, # 41-97, relating to Medicare Hospice Conditions of Participation, specifically addressed these issues. As stated in the transmittal notice, for patients residing in skilled nursing facilities or other places of residence:

> "(T)he professional services usually provided by the hospice to the patient in his/her home should continue to be provided by the hospice to the resident. This includes furnishing any necessary medical services to those patients that the hospice would normally furnish to patients in their homes. In addition, substantially all hospice core services must be routinely provided directly by hospice employees and cannot be delegated. The hospice may involve the residential staff who are permitted by the facility and by law in assisting with the administration of prescribed therapies included in the plan of care only to the extent that the hospice would routinely utilize the services of a hospice patient's family/care giver in implementing the plan of care. The hospice may involve residential staff who are permitted by the facility and by law in assisting with the administration of prescribed therapies included in the plan of care only to the extent that the hospice would routinely utilize the services of a hospice patient's family/care giver in implementing the plan of care.
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> Hospices and home health agencies generally train family members to administer medications for patients in the home; however, most nurse practice acts require that this be done by registered nurses. Accordingly, we believe it is appropriate for a hospice to arrange with nursing facility staff to administer medications as would be done by family members . . . The hospice assumes full responsibility for the professional management of the hospice patient's

care related to the terminal illness. It is the responsibility of the hospice to ensure that all services are provided in accordance with the plan of care at all times and in all settings (e.g., the home, place of residence, outpatient, and inpatient settings)."

III. Effect of Proposed Changes:

The bill expands DOEA's rule authority to include the authority to make rules with respect to hospice standards and procedures. The bill authorizes DOEA to address, by rule, hospice standards and procedures relating to: license requirements; administrative management of a hospice; components of a patient plan of care; advanced directives and do-not-resuscitate orders; the provision of hospice care in alternative residential settings; physical plant standards for hospice residential units; disaster preparedness plans; quality assurance and utilization review committees; and the collection of hospice data.

The bill allows hospices to provide physician services directly or through contract and specifies that nursing services, social work services, pastoral or counseling services, dietary counseling, home health aide services, and bereavement counseling services must be provided directly by the hospice.

The bill adds adult family care homes as a venue in which hospice care can be provided in addition to in a person's own home.

The bill expressly establishes that hospice patients residing in other regulated environments are hospice patients, and that the hospice is responsible for the provision of hospice services.

The bill will take effect on July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill allows hospices to contract for physician services. This creates a conflict with s. 400.6085, F.S., which requires that all core hospice services, which are inclusive of physician services, be directly provided by the hospice.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Health Aging and Long-Term Care:
Allows hospices to provide physician and home health aide services through contract, and to supplement hospice employees with other contracted staff during times of peak patient loads or under extraordinary circumstances. Amends s. 400.6085, F.S., to conform.